NOTES OF CASES.

Bailments—Warehousemen—Liability of Lessor of Safety Deposit Box for Loss of Contents.—In Schaefer *v.* Washington Safety Deposit Co., 117 N. E. 781, Ann. Cases, 1918C, 906, an action to recover money deposited in a safety deposit box rented from defendant by the plaintiff, it being alleged the money was abstracted from the box without the consent or knowledge of the plaintiff and in violation of the defendant's contract to keep the money safely, the Supreme Court of Illinois held the defendant liable, declaring that although the key of a safety deposit box is in the hands of the lessee the lessor is bound to use reasonable and ordinary care for the protection of the contents of the box; and where the box is under the exclusive control of the lessor, the lessee obtaining access thereto by signing a slip and giving the key to the person in charge of the safety deposit vault, proof of the loss of the contents of the box raises a presumption of negligence on the part of the lessor. The court said:

"The relation between the plaintiff and defendant was one of bailment, and the defendant, without any special contract to such effect, was bound to use ordinary care in keeping the deposit although the plaintiff, who rented the box, kept the key. Mayer *v.* Brensinger, 180 Ill. 110, 54 N. E. 159, 72 Am. St. Rep. 196. The duty of exercising such care arises from the nature of the business which a safety deposit company carries on, and the obligation to discharge the duty is implied from the relation of the parties. As bailee the defendant was bound to exercise such care and diligence in the preservation of the property entrusted to it as every prudent man takes of his own goods of like character. * * * The instruction criticised by the Appellate Court as incorrect was numbered 4. It purports to have been given orally but in fact was one of a series of written instructions read to the jury and was excepted to by the defendant. The instruction contained as a hypothesis of fact that the plaintiff rented from the defendant a safety deposit box in which to keep her money and other valuables; that she placed in the box $1,250; that on returning to the box the money was not there; that she demanded that the defendant return the money; that the defendant failed to return the money, and the plaintiff was not guilty of any negligence contributing to the loss of her money. The instruction informed the jury as the law that if those facts were found from a preponderance of the evidence they would make out a prima facie case in favor of the plaintiff, and it then devolved upon the defendant to prove that it used ordinary care and diligence to safely keep and return the plaintiff's money. The undisputed evidence was that the box was in the exclusive control of the defendant and that the plaintiff could not obtain access to it except by signing a slip at the office and giv-

ing her key to the person in charge of the vaults. Under such conditions we see no reason to depart from the ordinary rule that where a bailee receives property and fails to return it the presumption arises that the loss was due to his negligence, and the law imposes on him the burden of showing that he exercised the degree of care required by the nature of the bailment. Cumins *v.* Wood, 44 Ill. 416, 92 Am. Dec. 189; Bennett *v.* O'Brien, 37 Ill. 250. To call upon the plaintiff, under such circumstances to prove some specific act of negligence by which her money was lost, and which she must necessarily prove by defendant's employees, would impose upon her a practically impossible burden."

Bailments—Box Containing Will—"Special Deposit."—In Sawyer *v.* Old Lowell Nat. Bank, 119 N. E. 825; the Supreme Judicial Court of Massachusetts held that where testatrix, when living, delivered to a bank a tin box about a foot long, seven inches wide and six or seven inches deep, having her name scratched on it in two or three places and containing her will, acceptance of the box, without disclosure of what it contained, did not make the bank responsible as bailee of the will.

The court also held that a tin box, gratuitously stored in a national bank's vault for the owner's accommodation, can not be regarded as a "special deposit" the handling of which would come within the regular line of banking business, like money, stocks, bonds and other securities. The court said:

"Sarah R. Spalding died on shipboard on April 6, 1902, while returning from Jamaica. Shortly thereafter a search was begun for a will which it was known she had at one time executed. One Charles H. Coburn called at the banking rooms of the defendant, where Miss Spalding had hired a safe deposit box and kept a deposit account. He had the key of the safe deposit box, and its contents were examined in his presence, but no will was found therein.

"Mr. Coburn was duly appointed administrator of Miss Spalding's estate on May 27, 1902. He administered the estate, had his final account allowed May 25, 1905, and distributed the personal estate among the next of kin in pursuance of a decree issued by the Probate Court on June 7, 1905.

"In February, 1910, two clerks in the employ of the defendant were engaged in removing from the bank vault certain old books and records, preparatory to installing new steel shelving. On the floor, under one of the old shelves, they found a rectangular tin box about twelve inches long, seven inches wide and six or seven inches deep. The name Sarah R. Spalding was scratched thereon in two or three places, and when the box was opened there was found therein the will of Miss Spalding and some other papers and family 'keepsakes'